

Introduced by Senator Corbett

February 18, 2010

An act to amend Sections 1161.2 and 1161a of the Code of Civil Procedure, relating to residential tenancies and foreclosure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, as introduced, Corbett. Residential tenancies: foreclosure.

Existing law governs unlawful detainer proceedings. Existing law authorizes the court clerk to allow access to limited civil case records filed under these provisions to certain persons, including a party to the action or a resident of the premises, under certain conditions, without regard to when they request that access. Existing law also authorizes the clerk to allow access to any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action, except as specified.

This bill would additionally authorize the clerk to allow access to those records to any other person in the case of a complaint involving residential property that has been sold in foreclosure, or under other, specified proceedings, if 60 days have elapsed since proof of service of the complaint was filed with the court and judgment against all defendants has been entered for the plaintiff, after a trial. If judgment is not entered under these conditions, the bill would prohibit the clerk from allowing access to any court records in the action, except to the persons described above who are permitted access without regard to when they request access.

Existing law governing unlawful detainer proceedings also requires that a tenant or subtenant in possession of a rental housing unit, as defined, which has been sold by reason of certain enumerated causes,

including foreclosure, who rents or leases the rental housing unit either on a periodic basis, as specified, or for a fixed period of time, be given written notice to quit, as specified, at least as long as the term of hiring itself but not exceeding 30 days, before the tenant or subtenant may be removed from that rental housing unit.

This bill would additionally require that any notice to quit regarding a housing unit served within one year after a foreclosure sale include a separate cover sheet that contains an additional notice to renters. The bill would set forth the content of this notice providing the tenant with specified information regarding tenants' rights. The failure to attach this cover sheet would subject the owner to a \$500 fine in addition to any other fines, penalties, and remedies provided by law. The bill would also provide that under certain circumstances the cover sheet need not be served, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1161.2 of the Code of Civil Procedure
- 2 is amended to read:
- 3 1161.2. (a) The clerk may allow access to limited civil case
- 4 records filed under this chapter, including the court file, index,
- 5 and register of actions, only as follows:
- 6 (1) To a party to the action, including a party's attorney.
- 7 (2) To any person who provides the clerk with the names of at
- 8 least one plaintiff and one defendant and the address of the
- 9 premises, including the apartment or unit number, if any.
- 10 (3) To a resident of the premises who provides the clerk with
- 11 the name of one of the parties or the case number and shows proof
- 12 of residency.
- 13 (4) To any person by order of the court, which may be granted
- 14 ex parte, on a showing of good cause.
- 15 (5) ~~To~~ Except as provided in paragraph (6), to any other person
- 16 60 days after the complaint has been filed, unless a defendant
- 17 prevails in the action within 60 days of the filing of the complaint,
- 18 in which case the clerk may not allow access to any court records
- 19 in the action, except as provided in paragraphs (1) to (4), inclusive.
- 20 (6) In the case of a complaint involving residential property
- 21 based on Section 1161a or 1161b, to any other person, if 60 days

1 *have elapsed since proof of service of the complaint was filed with*
2 *the court, and, as of that date, judgment against all defendants*
3 *has been entered for the plaintiff, after a trial. If judgment is not*
4 *entered under the conditions described in this paragraph, the clerk*
5 *shall not allow access to any court records in the action, except*
6 *as provided in paragraphs (1) to (4), inclusive.*

7 (b) For purposes of this section, “good cause” includes, but is
8 not limited to, the gathering of newsworthy facts by a person
9 described in Section 1070 of the Evidence Code. It is the intent of
10 the Legislature that a simple procedure be established to request
11 the ex parte order described in subdivision (a).

12 (c) Upon the filing of any case so restricted, the court clerk shall
13 mail notice to each defendant named in the action. The notice shall
14 be mailed to the address provided in the complaint. The notice
15 shall contain a statement that an unlawful detainer complaint
16 (eviction action) has been filed naming that party as a defendant,
17 and that access to the court file will be delayed for 60 days except
18 to a party, an attorney for one of the parties, or any other person
19 who (1) provides to the clerk the names of at least one plaintiff
20 and one defendant in the action and provides to the clerk the
21 address, including any applicable apartment, unit, or space number,
22 of the subject premises, or (2) provides to the clerk the name of
23 one of the parties in the action or the case number and can establish
24 through proper identification that he or she lives at the subject
25 premises. The notice shall also contain a statement that access to
26 the court index, register of actions, or other records is not permitted
27 until 60 days after the complaint is filed, except pursuant to an
28 order upon a showing of good cause therefor. The notice shall
29 contain on its face the name and telephone number of the county
30 bar association and the name and telephone number of an office
31 or offices funded by the federal Legal Services Corporation or
32 qualified legal services projects that receive funds distributed
33 pursuant to Section 6216 of the Business and Professions Code,
34 that provide legal services to low-income persons in the county in
35 which the action is filed. The notice shall state that these numbers
36 may be called for legal advice regarding the case. The notice shall
37 be issued between 24 and 48 hours of the filing of the complaint,
38 excluding weekends and holidays. One copy of the notice shall be
39 addressed to “all occupants” and mailed separately to the subject

1 premises. The notice shall not constitute service of the summons
2 and complaint.

3 (d) Notwithstanding any other provision of law, the court shall
4 charge an additional fee of fifteen dollars (\$15) for filing a first
5 appearance by the plaintiff. This fee shall be added to the uniform
6 filing fee for actions filed under this chapter.

7 (e) This section does not apply to a case that seeks to terminate
8 a mobilehome park tenancy if the statement of the character of the
9 proceeding in the caption of the complaint clearly indicates that
10 the complaint seeks termination of a mobilehome park tenancy.

11 SEC. 2. Section 1161a of the Code of Civil Procedure is
12 amended to read:

13 1161a. (a) As used in this section:

14 (1) “Manufactured home” has the same meaning as provided
15 in Section 18007 of the Health and Safety Code.

16 (2) “Mobilehome” has the same meaning as provided in Section
17 18008 of the Health and Safety Code.

18 (3) “Floating home” has the same meaning as provided in
19 subdivision (d) of Section 18075.55 of the Health and Safety Code.

20 (b) In any of the following cases, a person who holds over and
21 continues in possession of a manufactured home, mobilehome,
22 floating home, or real property after a three-day written notice to
23 quit the property has been served upon the person, or if there is a
24 subtenant in actual occupation of the premises, also upon ~~such that~~
25 subtenant, as prescribed in Section 1162, may be removed
26 therefrom as prescribed in this chapter:

27 (1) ~~Where~~ *If* the property has been sold pursuant to a writ of
28 execution against ~~such that~~ person, or a person under whom ~~such~~
29 *that* person claims, and the title under the sale has been duly
30 perfected.

31 (2) ~~Where~~ *If* the property has been sold pursuant to a writ of
32 sale, upon the foreclosure by proceedings taken as prescribed in
33 this code of a mortgage, or under an express power of sale
34 contained therein, executed by ~~such that~~ person, or a person under
35 whom ~~such that~~ person claims, and the title under the foreclosure
36 has been duly perfected.

37 (3) ~~Where~~ *If* the property has been sold in accordance with
38 Section 2924 of the Civil Code, under a power of sale contained
39 in a deed of trust executed by ~~such that~~ person, or a person under

1 whom ~~such~~ *that* person claims, and the title under the sale has been
2 duly perfected.

3 (4) ~~Where~~ *If* the property has been sold by ~~such~~ *that* person, or
4 a person under whom ~~such~~ *that* person claims, and the title under
5 the sale has been duly perfected.

6 (5) ~~Where~~ *If* the property has been sold in accordance with
7 Section 18037.5 of the Health and Safety Code under the default
8 provisions of a conditional sale contract or security agreement
9 executed by ~~such~~ *that* person, or a person under whom ~~such~~ *that*
10 person claims, and the title under the sale has been duly perfected.

11 (c) Notwithstanding the provisions of subdivision (b), a tenant
12 or subtenant in possession of a rental housing unit which has been
13 sold by reason of any of the causes enumerated in subdivision (b),
14 who rents or leases the rental housing unit either on a periodic
15 basis from week to week, month to month, or other interval, or for
16 a fixed period of time, shall be given written notice to quit pursuant
17 to Section 1162, at least as long as the term of hiring itself but not
18 exceeding 30 days, before the tenant or subtenant may be removed
19 therefrom as prescribed in this chapter.

20 (d) (1) *Any notice or notices to quit regarding a housing unit*
21 *served within one year after a foreclosure sale shall include a*
22 *separate cover sheet attached on top of the notice or notices.*

23 (2) *The cover sheet shall consist of the following notice, in at*
24 *least 12-point type:*

25
26 *Notice to Any Renters Living At*
27 *[street address of the unit]*
28

29 *The attached notice means that the owner of your home plans*
30 *to evict you. You should talk to a lawyer immediately to see what*
31 *your rights are.*

32 *If you receive any court papers, you must file a written response*
33 *on a special form with the court, within five days. You must respond*
34 *even if your name is not on the papers. If you don't respond, you*
35 *will likely lose any rights you may have. In many cases, you can*
36 *respond without being reported to a credit or tenant reporting*
37 *agency. You should ask a lawyer about it.*

38 *You usually have the right to stay in your home for 90 days,*
39 *regardless of any deadlines stated on any attached papers. You*
40 *may have the right to stay even longer if you have a lease. In some*

1 cases and in some cities with a “just cause for eviction law,” you
2 may not have to move at all. But you must take the proper legal
3 steps in order to protect your rights. Your home was sold in
4 foreclosure on [insert date], and the sale was recorded in [insert
5 recorded document location]. Your rights are affected by whether
6 you lived at the property on the date it was sold.

7 8 *How to Get Legal Help* 9

10 If you cannot afford an attorney, you may be eligible for free
11 legal services from a nonprofit legal services program. You can
12 locate these nonprofit groups at the California Legal Services Web
13 site (www.lawhelpcalifornia.org), the California Courts Online
14 Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting
15 your local court or county bar association.

16
17 (3) Failure to attach the cover sheet as required by this section
18 shall subject the owner to a civil fine of five hundred dollars
19 (\$500), in addition to any other fines, penalties, and remedies
20 provided by law.

21 (e) The cover sheet required by subdivision (d) need not be
22 served if all of the following apply:

23 (1) The tenancy sought to be terminated was created after the
24 foreclosure sale, by written agreement of the parties.

25 (2) The written agreement is attached to the notice.

26 (3) Either:

27 (A) The notice is served for a cause specified in Section 1161
28 and complies with the requirements of that section.

29 (B) The notice is served pursuant to Section 1946.1 of the Civil
30 Code, and at least 60 days have elapsed after the foreclosure sale
31 before notice is given.

32 ~~(d)~~

33 (f) For the purpose of ~~subdivision (e)~~ this section, “rental
34 housing unit” means any structure or any part thereof which is
35 rented or offered for rent for residential occupancy in this state.